IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3020 OF 2004

Union of India & Others .. Petitioners
V/s.
P.S. Bora .. Respondent

Mr. S.S. Pakale with Mr. Suresh Kumar for the Petitioners
Mr. G.K. Masond i/b. Ms. Ritu Singh for the Respondent

CORAM : F.I. REBELLO &
S.P. KUKDAY, JJ.
DATED : 14.03.2005

P.C.:-

1. By the present Petition, the Petitioners-Union of India impugns the order dated 13.1.2004 passed by the Central Administrative Tribunal. The Respondents had approached CAT for various reliefs including for regularisation to the post of Tindel.

2. From the judgment of CAT, we have noted that the Respondent was first appointed in the year 1985 as Tindel. It appears at that time there were no recruitments rules framed under Article 309 of the Constitution of India. Even in the absence of statutory rules, it is still open to the Union of India to make regular appointments, if there were administrative instructions. Draft rules can be considered as administrative instructions. The recruitment rules came to be notified on 18.5.1986. Apart from that what is more relevant is that the Respondents were considered and selected for the next higher post but order of appointment was not given on account of not being regularised in the initial post, to which Respondent was

appointed.

3. The learned Tribunal after considering the material on record and more so, the un-interrupted service, and earlier judgment of the Tribunal has been pleased to grant the relief as prayed for by the Respondents. The only contention raised was that when the posts were approved, the Respondents were less than 40 years of age. The Tribunal noted that there was provision for relaxation and for the reasons set out therein, allowed the Original Application.

4. It may be noted that the recruitment rules of 1986 provide for appointment to the post of Tindel, firstly by promotion failing which by direct recruitment. In the instant case, the posts were created in the year 1985. The Respondent was at the relevant time Sr. Deck Hand, but was still considered for appointment as Tindel. The number of posts were 41. In these circumstances it can be considered that the Petitioner resorted to direct recruitment in the absence of promotees. The Respondent after so many years of service as a Tindel cannot now be reverted to the post of Sr. Deck Hand and considered for promotion to the post of Sukhani. The letter of appointment stated that the Respondent would be on probation for a period of two years. The other contents of letter of appointment would indicate that it was by direct recruitment.

5. After considering the order of the learned Tribunal and the fact that the Respondent has been in service, right from 1985, and the reasons given by the Tribunal, we do not think this to be a fit case, where this Court should interfere with the order of the Tribunal in exercise of it's extraordinary jurisdiction. Considering that there is no error apparent on the face of the record, no interference is called for. Petition rejected.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)